

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAVIS JAMES,

Plaintiff,

-against-

DANA GAGE, et al.,

Defendants.

ORDER

15-CV-00106 (PMH)

PHILIP M. HALPERN, United States District Judge:

Plaintiff Travis James (“Plaintiff”), proceeding *pro se* and *in forma pauperis*, alleges under 42 U.S.C. § 1983 that his constitutional rights were violated while he was incarcerated at Sing Sing Correctional Facility in Ossining, New York. (*See* Doc. 83).

By operation of three separate Opinions and Orders issued by Judge Karas, Plaintiff has only two claims left in this proceeding: (1) a claim for deliberate indifference under the Eighth Amendment against Nurse Barbara Furco (“Furco”); and (2) a claim for deprivation of due process in violation of the Fourteenth Amendment against Lt. Thayer (“Thayer”). (*See* Doc. 82 (June 2018 Opinion and Order); Doc. 95 (March 2019 Opinion and Order); Doc. 103 (November 2019 Opinion and Order)).

In a letter filed on March 3, 2020, Thayer sought permission from Judge Karas to file a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). (Doc. 104). By endorsement dated March 10, 2020, Judge Karas granted Thayer leave to make the Rule 12(c) motion and set a briefing schedule. (Doc. 105). There is no indication on the docket that the March 10, 2020 endorsement was sent to Plaintiff. In a submission docketed on March 30, 2020, Plaintiff opposed Thayer’s request for leave to move under Rule 12(c). (Doc. 106). On April 1, 2020, Judge Karas endorsed Plaintiff’s opposition, reiterated the briefing schedule that had been set previously,


and directed the Clerk of the Court to mail a copy of the endorsement to Plaintiff. (Doc. 107). There is no indication on the docket that the April 1, 2020 endorsement was sent to Plaintiff. Thereafter, in compliance with the briefing schedule set by Judge Karas, Thayer filed his Rule 12(c) motion on April 8, 2020.¹ (*See* Doc. 108; Doc. 109). Thayer's filings do not include an affidavit of service; rather, the memorandum of law contains a notation that reads, "*Due to COVID-19, the Office is closed and we are unable to formally mail, but have asked to [sic] IRC to provide a copy to the inmate by personal delivery.*" (Doc. 109 at 9 (emphasis in original)).

In light of the foregoing, Thayer's pending motion for judgment on the pleadings is DENIED without prejudice. Thayer and Furco are directed to serve and file a letter by March 19, 2021 advising: (1) whether Thayer wishes to refile his Rule 12(c) motion; and (2) the status of discovery. Should Thayer wish to refile his Rule 12(c) motion, the Court will set a new briefing schedule. Counsel is reminded that submission of extraneous documents must comply with Local Civil Rule 7.1(a)(3) of the Local Rules of the U.S. District Courts for the Southern and Eastern Districts of New York.

The Clerk of the Court is respectfully directed to terminate the motion sequence pending at Doc. 108 and to mail a copy of this Order to Plaintiff.

SO ORDERED:

Dated: White Plains, New York
March 11, 2021



PHILIP M. HALPERN
United States District Judge

¹ This case was reassigned from Judge Karas to this Court on April 16, 2020. (Apr. 16, 2020 Entry).